



December 5, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-5660

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155624.

The Texas Department of Criminal Justice (the “department”) received a request for information relating to a recently filled job posting, including information about the criteria used to select applicants for an interview, questions asked of the interviewees, interview information for the selected applicant, and information about possible conflicting information on the job posting and results posting. You claim that some of the requested interview questions and answers are excepted from disclosure under section 552.122 of the Government Code. You also contend that the social security numbers of department employees are excepted from disclosure under section 552.117 of the Government Code.¹ We have also received comments from the requestor. *See* Gov’t Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

We begin by addressing the requestor’s contention that you have not complied with section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

¹Because you seek to withhold only a portion of the requested information, we assume you have released any other information responsive to the request. If you have not done so, you must do so now. *See* Gov’t Code §§ 552.021, .221, .301, .302.

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the department's "Personnel Division" received the instant request on September 17, 2001. However, the requestor contends that her request, dated August 13, 2001, was received by the department much earlier. In support of this contention, the requestor has provided this office with correspondence she received from the Open Records Coordinator for the department's Human Resources Headquarters Office, dated August 20, 2001. In this correspondence, the open records coordinator acknowledges the receipt of the instant request for information. Furthermore, the Human Resources Headquarters Office stamped the request as received on August 17, 2001. Therefore, it appears from the documents submitted to this office that the department received the request for information on August 17, 2001. You did not request a decision from this office until October 1, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). Section 552.122 of the Government Code is a discretionary exception and therefore cannot provide a compelling reason for overcoming the presumption of openness. See Gov't Code § 552.007(a); Open Records Decision No. 522 at 4 (1989). Therefore, you must release the requested interview questions and answers.

On the other hand, section 552.117 can provide a compelling reason for overcoming the presumption of openness. Section 552.117 provides, in relevant part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

. . .

(3) an employee of the Texas Department of Criminal Justice, regardless of whether the employee complies with Section 552.024

Consequently, we agree that, to the extent the requested information contains the social security number of a department employee, you must withhold the social security number under section 552.117(3).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Nathan E. Bowden". The signature is written in a cursive style with a large, stylized 'N' and 'B'.

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 155624

Enc: Submitted documents

c: Ms. Rachel Alderete
7920 Rockwood Lane, #234
Austin, Texas 78757
(w/o enclosures)